INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	5
Conclusion	7
Appendix	9

CITATIONS

Cases:	
Fletcher v. *Jones*, 105 F. (2d) 58, certiorari denied, 308 U. S. 555	5, 6
Graves v. *New York ex rel. O'Keefe*, 306 U. S. 466	5
Pittman v. *Home Owners' Loan Corporation*, 308 U. S. 21	5
Russell Wheel and Foundry Co. v. *United States*, 31 F. (2d) 826	7
Silberschein v. *United States*, 266 U. S. 221	7
United States v. *Cohn*, 270 U. S. 339	7
Statutes:	
Act of June 13, 1933, c. 64, 48 Stat. 128, *et seq.* (12 U. S. C. 1461, *et seq.*):	
Sec. 2	9
Sec. 4	9
Act of April 27, 1934, 48 Stat. 643 (12 U. S. C. 1463 (c))	6
Act of June 27, 1934, 48 Stat. 1263 (12 U. S. C. 1463 (c))	6
Act of June 27, 1934, 48 Stat. 1256 (12 U. S. C. 1725)	6
Act of May 28, 1935, 49 Stat. 296 (12 U. S. C. 1463 (c))	6
Act of August 23, 1935, 49 Stat. 709 (12 U. S. C. 24)	6
Act of June 22, 1936, 49 Stat. 1647	6
Act of June 23, 1936, 49 Stat. 1845	6
Act of May 14, 1937, 50 Stat. 155	6
Act of June 28, 1937, 50 Stat. 349	6
Act of May 23, 1938, 52 Stat. 432	6
Act of March 16, 1939, 53 Stat. 546	6
Act of April 18, 1940, 76th Cong., Pub., No. 549	6
31 U. S. C., sec. 231	10
sec. 232	11
sec. 233	11
sec. 234	12
sec. 235	12
Miscellaneous:	
37 Ops. Atty. Gen. 241	7

403406—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 226

UNITED STATES OF AMERICA, ACTING ON THE RELATION OF EDMOND C. FLETCHER, AND THE SAID EDMOND C. FLETCHER, INDIVIDUALLY, PETITIONERS

v.

JOHN H. FAHEY, THOMAS D. WEBB, FRED W. CATLETT, WILLIAM F. STEPHENSON, PATRICK J. MALONEY, AND ROBERT L. NAGLE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The judgment of the District Court of the United States for the District of Columbia (R. 15) was entered without an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 19–21) is not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on

February 24, 1941 (R. 22). A petition for rehearing was denied March 19, 1941 (R. 24–25), and a motion to vacate the judgment was denied May 3, 1941 (R. 26–27). By order of Mr. Justice Black, dated June 10, 1941, the time within which to file a petition for a writ of certiorari was extended to June 30, 1941. The petition for a writ of certiorari was filed on June 30, 1941. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judical Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Pursuant to the Home Owners' Loan Act of 1933, respondents, members of the Federal Home Loan Bank Board, created the Home Owners' Loan Corporation by issuing a charter to it and, on their request as provided by statute, received payment from the Secretary of the Treasury for the capital stock of the corporation. The question presented is whether the respondents, because they had not formed the Home Owners' Loan Corporation under the laws of the District of Columbia or of some state, are liable to the United States for having made false claims upon the Government.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the appendix, *infra,* pp. 9–12.

STATEMENT

On May 18, 1939, petitioners, pursuant to the provisions of 31 U. S. C. 231–235, brought suit

against the respondents in the District Court of the United States for the District of Columbia to recover the sum of $400,034,000, alleging that respondents had made false claims against the United States. The facts as alleged in the amended complaint (R. 2–13) are as follows:

On June 13, 1933, the Congress enacted the Home Owners' Loan Act of 1933 (*infra*, pp. 9–10) authorizing and directing the Federal Home Loan Bank Board to create as an instrumentality of the United States a corporation to be known as the Home Owners' Loan Corporation. The members of the Board were to constitute the board of directors of the corporation, and the Board was authorized to determine the minimum amount of capital stock of the corporation, and to increase such amount from time to time, but not to exceed $200,000,000. The Secretary of the Treasury was to subscribe for the stock on behalf of the United States, and the corporation was to issue to the Secretary of the Treasury receipts for payments which were to be evidence of the stock ownership by the United States. Respondents were, or have been, on or at some time since June 13, 1933, members of the Board.[1]

On June 14, 1933, certain of the respondents, acting in the name of the Board, at a meeting in Washington, D. C., "spread upon the records of said

[1] Respondents Patrick J. Maloney and Robert L. Nagle were treasurer and secretary, respectively, of the corporation, and neither was ever a member of the board of directors of the corporation.

Board" a document entitled a charter purporting to create the corporation (R. 4–5). On June 15, 1933, certain of the respondents notified the Secretary of the Treasury that the corporation was an existing body corporate, with a capital stock of $200,000,000, and requested the Secretary to subscribe on behalf of the United States to all of the capital stock and to pay therefor from the United States Treasury (R. 6). On June 19, 1933, the Acting Secretary of the Treasury, by letter to the Board, subscribed to all of the capital stock of the corporation at the price of $200,000,000, which total amount in seventeen separate installments was eventually placed in a credit account in the Treasury of the United States (R. 7–12).

The complaint alleged that the charter (R. 4–5) was spread upon the records of the Board without legal authority (R. 4), that it was null and void on its face (R. 5) since the Home Owners' Loan Act did not authorize the Board to grant a charter to the corporation, which fact respondents well knew, and that the representations to the Secretary of the Treasury that a corporation existed with capacity to receive money from the United States and all subsequent calls on the Secretary of the Treasury for payment of additional stock were false, fictitious, and fraudulent (R. 6–12). The complaint alleged that consequently the defendants are liable to the United States in double the sum of $200,000,000, and $2,000 as a penalty for each false, fictitious, and

fraudulent claim, seventeen in number, a total sum of $400,034,000 (R. 12–13).

On respondents' motion the complaint was dismissed by the District Court for failure to state a cause of action (R. 15). On appeal the order of dismissal was affirmed by the court below (R. 22). The court held, on the authority of *Fletcher* v. *Jones,* 105 F. (2d) 58 (App. D. C.), certiorari denied, 308 U. S. 555, that the "Home Owners' Loan Corporation had been properly organized according to law and had complete corporate existence" (R. 21). A petition for rehearing was denied (R. 24–25).

ARGUMENT

1. The decision of the court below is clearly correct. The Home Owners' Loan Corporation was properly created according to law. The method provided by the Home Owners' Loan Act of 1933 (*infra,* pp. 9–10) for the establishment of the Home Owners' Loan Corporation "was that the Federal Home Loan Bank Board should itself create the Home Owners' Loan Corporation." *Fletcher* v. *Jones,* 105 F. (2d) 58, 60 (App. D. C.), certiorari denied, 308 U. S. 555. The creation and existence of the corporation has been recognized and noticed by the courts. *Fletcher* v. *Jones, supra,* at p. 62, and cases cited therein; see *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466, 476; cf. *Pittman* v. *Home Owners' Loan Corporation,* 308 U. S. 21, 32. Petitioner's contention that application to a state or to the District of Columbia "is a requirement of the

laws of the sovereign" (Pet. 18) is obviously insubstantial in view of the fact that precisely this method of creation has been commonly used by Congress in the past.[2] *Fletcher* v. *Jones, supra,* at 60.[3]

2. The decision below may be supported on other and equally conclusive grounds. The calls on the Secretary of the Treasury to purchase the stock of the corporation do not constitute the making of a claim against the Government within the meaning

---

[2] Petitioners' contention (Pet. 5) that the court below denied petitioners their day in court by refusing to consider whether the so-called charter created the Home Owners' Loan Corporation is similarly without substance. It overlooks the fact that the court below expressly relied on *Fletcher* v. *Jones*, *supra*, which held that a charter had been issued and the corporation formed (*id.*, at 61) and that the court below itself held that the corporation "had been properly organized according to law." (R. 21.)

[3] Congress has, in the enactment of subsequent legislation, repeatedly recognized the Home Owners' Loan Corporation as a validly created and actively functioning Government corporation and instrumentality. See, e. g., Act of April 27, 1934, 48 Stat. 643, 12 U. S. C. 1463 (c), providing for the guarantee of the bonds of the corporation; Act of June 27, 1934, 48 Stat. 1263, 12 U. S. C. 1463 (c), and Act of May 28, 1935, 49 Stat. 296, 12 U. S. C. 1463 (c), increasing the amount of bonds the corporation might issue; Act of June 27, 1934, 48 Stat. 1256, 12 U. S. C. 1725, directing the corporation to subscribe and pay for the $100,000,000 capital stock of the Federal Savings and Loan Insurance Corporation. See also Act of August 23, 1935, 49 Stat. 709, 12 U. S. C. 24; Act of June 23, 1936, 49 Stat. 1845; Act of May 14, 1937, 50 Stat. 155; Act of June 22, 1936, 49 Stat. 1647; Act of June 28, 1937, 50 Stat. 349; Act of May 23, 1938, 52 Stat. 432; Act of March 16, 1939, 53 Stat. 546; Act of April 18, 1940, 76th Cong., Pub., No. 549.

of the statute. 31 U. S. C. 231–235. See *United States* v. *Cohn,* 270 U. S. 339, 345–346.[4] In any event, the facts alleged do not constitute the making of a claim "knowing such claim to be false, fictitious, or fraudulent."[5] As early as August 22, 1933, before the Secretary of Treasury had made any payment to the corporation for its stock and before the corporation had called for any but an initial credit of $1,000,000, the Attorney General had ruled that the Home Owners' Loan Corporation was validly organized, and referred to "the charter of the Home Owners' Loan Corporation, as adopted by the Federal Home Loan Bank Board on June 14, 1933." 37 Ops. Atty. Gen. 241 at 249. This seems to be conclusive on the issue of respondents' good faith.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions, and the corporate exist-

---

[4] No loss or damage to the Government has been shown. The money was initially deposited to the credit of the Home Owners' Loan Corporation Account in the United States Treasury and remained the funds of the United States. In any event, the corporation is a public instrumentality and even in respect of payments made by the Treasury to it, such money was no less public revenue in the corporation's hands than it was in the Treasury. *Russell Wheel and Foundry Co.* v. *United States*, 31 F. (2d) 826 (C. C. A. 6th).

[5] The allegations in the complaint that the "claims" were false, fictitious, and fraudulent, "as the defendants then and there well knew" (R. 7), are legal conclusions not admitted by demurrer. *Silberschein* v. *United States*, 266 U. S. 221, 225.

ence of the Home Owners' Loan Corporation is well settled. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Acting Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
PAUL A. SWEENEY,
ELLIS LYONS,
Attorneys.

HAROLD LEE,
General Counsel,
E. K. NEUMANN,
Associate General Counsel,
NEIL THOMPSON,
Assistant General Counsel,
Home Owners' Loan Corporation.
JULY 1941.